

Kevin J. Curtis, WSBA No. 12085
Collette C. Leland, WSBA No. 40686
WINSTON & CASHATT, LAWYERS, a
Professional Service Corporation
601 W. Riverside, Ste. 1900
Spokane, WA 99201
Telephone: (509) 838-6131

Attorneys for Defendant Daniel N. Gordon, P.C.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

TINA COLEMAN,

Plaintiff, No. CV-10-428-EFS

vs.

DANIEL N. GORDON, P.C., and ASSET
ACCEPTANCE, LLC,

Defendants.

MEMORANDUM IN SUPPORT OF
DEFENDANT DANIEL N. GORDON,
P.C.'S MOTION TO STRIKE AND, IN
THE ALTERNATIVE, MOTION FOR
LEAVE TO FILE A REPLY

Defendant Daniel N. Gordon, P.C., by and through its attorneys of record,
moves the Court for an order striking Plaintiff's Response to Defendant Asset
Acceptance, LLC's Joinder in Daniel N. Gordon, P.C.'s Motion for Summary
Judgment.

MEMORANDUM IN SUPPORT OF DEFENDANT
DANIEL N. GORDON, P.C.'S MOTION TO
STRIKE . . .

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Winston & Cashatt
A PROFESSIONAL SERVICE CORPORATION
Bank of America Financial Center
601 West Riverside Avenue, Suite 1900
Spokane, Washington 99201-0695
(509) 838-6131

I. INTRODUCTION

Plaintiff concedes she has sufficiently briefed the issues raised by Daniel N. Gordon, P.C. (Gordon, P.C.) in its motion for summary judgment, yet seizes upon Asset Acceptance, LLC's (Asset Acceptance) brief statement that it is joining in Gordon, P.C.'s motion as an opportunity to present her arguments anew based upon a new claim. (ECF No. 69 at 2) Because Plaintiff's response is an improper supplemental filing, which raises a new claim in a response to summary judgment, Gordon, P.C. asks that it be stricken. Alternatively, Gordon, P.C. seeks this Court's leave, to the extent necessary, to file a reply responding to Plaintiff's new allegations.

II. FACTUAL AND PROCEDURAL BACKGROUND

On July 25, 2011, Gordon, P.C. filed the instant motion for summary judgment. Plaintiff responded with a 36-page brief, offering new theories of liability not raised in her Complaint—a fact Plaintiff acknowledges by notifying the Court she intends to seek leave to file a second amended complaint to “clarify the claims currently being pursued”. (ECF No. 69 at 2 n.1)

On October 7, 2011, Asset Acceptance joined Gordon, P.C.'s motion, submitting no additional briefing. (ECF No. 68)

1 On October 10, 2011, Asset Acceptance filed a motion in the pending
2 Snohomish County action, in which Asset Acceptance obtained a valid default
3 judgment against Plaintiff. (ECF No. 69-1) Asset Acceptance did not bring a new
4 legal action, but rather merely sought an order from Snohomish County District
5 Court (which retains jurisdiction over the Snohomish County action pending the
6 Plaintiff's motion to vacate). (EFC No. 69-1)
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9 In response to Asset Acceptance's motion in the Snohomish County matter,
10 Plaintiff filed the instant Response to Asset Acceptance, LLC's Joinder, arguing
11 Gordon, P.C. committed a new violation of 15 U.S.C. §1692i by filing a motion in
12 the pending Snohomish County action. (ECF No. 69 at 6 ("This motion . . .
13 constitutes a separate violation") Although Plaintiff indicated her intent to file a
14 Second Amended Complaint in this action, she has not yet done so.
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17 III. LEGAL ANALYSIS

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19 Gordon, P.C. asks this Court to exercise its discretionary power to strike
20 unscheduled supplemental filings and to strike Plaintiff's Response to Asset
21 Acceptance, LLC's Joinder in Daniel N. Gordon, P.C.'s Motion for Summary
22 Judgment.
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1 Asset Acceptance's Joinder in Daniel N. Gordon, P.C.'s Motion for
2 Summary Judgment raises no new issues and alleges no new facts; it merely joins
3 and incorporates the filings in Gordon, P.C.'s motion for summary judgment.
4 (ECF No. 68) Plaintiff's response does not address Asset Acceptance's joinder,
5 but rather responds to Gordon, P.C.'s reply in support of summary judgment and
6 raises new factual allegations. As it is nonresponsive, it is more properly viewed
7 as a supplemental brief filed without leave of court. No supplemental responses to
8 any motion may be filed in this matter unless the Court grants a motion to file such
9 documents. (ECF No. 32 at 6)

13 Moreover, it is improper for a plaintiff to raise new claims in response to a
14 summary judgment motion, without first seeking leave and filing an amended
15 complaint. Corales v. Flagstar Bank, FSB, ___ F. Supp. 2d ___, 2011 WL 4899957,
16 at *8 (W.D. Wash., Oct. 14, 2011). Plaintiff has failed to do so, yet admittedly has
17 taken the "opportunity to apprise the Court" of an alleged new violation of 15
18 U.S.C. §1692i. (ECF No. 69 at 2)

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IV. CONCLUSION

As the issues raised in Gordon, P.C.'s motion for summary judgment have already been sufficiently briefed, as this Court has not granted leave to file additional briefing, and as Plaintiff's new claim is not properly before the Court, Gordon, P.C. respectfully asks this Court to strike Plaintiff's response to joinder.

In the alternative, Gordon, P.C. asks this Court for leave, to the extent the Court deems leave is necessary, to file a reply in order to respond to the arguments and allegations raised in Plaintiff's response to Asset Acceptance's joinder.

RESPECTFULLY SUBMITTED this 10th day of November, 2011.

s/Kevin J. Curtis, WSBA No. 12085
Collette C. Leland, WSBA No. 40686
WINSTON & CASHATT, LAWYERS,
a Professional Service Corporation
Attorneys for Defendant Daniel N. Gordon,
P.C.
601 W. Riverside, Ste. 1900
Spokane, WA 99201
(509) 838-6131
Facsimile: (509) 838-1416
E-mail Address: kjc@winstoncashatt.com
ccl@winstoncashatt.com

1 I hereby certify that on November 10, 2011, I electronically filed the
2 foregoing with the Clerk of the Court using the CM/ECF System which will send
3 notification of such filing to the following:
4

5 Jon N. Robbins
6 Weisberg & Meyers
7 jrobbins@attorneysforconsumers.com

8 Attorney for Plaintiff

9 Daniel N. Gordon
10 Daniel N. Gordon, P.C.
11 Dgordonpc@aol.com

12 Attorney for Defendant Asset Acceptance, LLC

13
14 s/Kevin J. Curtis, WSBA No. 12085
15 Collette C. Leland, WSBA No. 40686
16 WINSTON & CASHATT, LAWYERS,
17 Professional Service Corporation
18 Attorneys for Defendant Daniel N. Gordon,
19 P.C.
20 601 W. Riverside, Ste. 1900
21 Spokane, WA 99201
22 (509) 838-6131
23 Facsimile: (509) 838-1416
24 E-mail Address: kjc@winstoncashatt.com
ccl@winstoncashatt.com